

HOUSE BILL No. 1320

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 20-24-6-11; IC 20-26-5-10; IC 20-28-5-9.

Synopsis: Criminal background checks for teachers. Requires a national criminal history background check for an applicant for: (1) certificated employment with a school corporation or charter school; or (2) a teacher license. Requires each school corporation and each charter school to adopt a policy concerning criminal history background checks.

Effective: July 1, 2009.

Duncan

January 13, 2009, read first time and referred to Committee on Education.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1320

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-13-3-16, AS AMENDED BY P.L.197-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 16. (a) As used in this chapter, "qualified entity"
4 means a business or an organization, whether public, private, for-profit,
5 nonprofit, or voluntary, that provides care or care placement services.

6 (b) The term includes the following:

7 (1) A business or an organization that licenses or certifies others
8 to provide care or care placement services.

9 (2) A home health agency licensed under IC 16-27-1.

10 (3) A personal services agency licensed under IC 16-27-4.

11 **(4) The department of education established by IC 20-19-3-1.**

12 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.3-2008,
13 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2009]: Sec. 39. (a) The department is designated as the
15 authorized agency to receive requests for, process, and disseminate the
16 results of national criminal history background checks that comply with
17 this section and 42 U.S.C. 5119a.



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(b) A qualified entity may contact the department to request a national criminal history background check on any of the following persons:

(1) A person who seeks to be or is employed with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person is initially employed by the qualified entity.

(2) A person who seeks to volunteer or is a volunteer with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person initially volunteers with the qualified entity.

(3) A person for whom a national criminal history background check is required under any law relating to the licensing of a home, center, or other facility for purposes of day care or residential care of children.

(4) A person for whom a national criminal history background check is required for purposes of placement of a child in a foster family home, a prospective adoptive home, or the home of a relative or other caretaker, or for purposes of a report concerning an adoption as required by IC 31-19-8.

(c) A qualified entity must submit a request under subsection (b) in the form required by the department and provide a set of the person's fingerprints and any required fees with the request.

(d) If a qualified entity makes a request in conformity with subsection (b), the department shall submit the set of fingerprints provided with the request to the Federal Bureau of Investigation for a national criminal history background check. The department shall respond to the request in conformity with:

(1) the requirements of 42 U.S.C. 5119a; and

(2) the regulations prescribed by the Attorney General of the United States under 42 U.S.C. 5119a.

(e) Subsection (f):

(1) applies to a qualified entity that:

(A) is not a **charter school**, a school corporation, or a special education cooperative; or

(B) is a **charter school**, a school corporation, or a special education cooperative and seeks a national criminal history background check for a volunteer; and

(2) does not apply to a qualified entity that is a:

(A) home health agency licensed under IC 16-27-1; or

(B) personal services agency licensed under IC 16-27-4.

(f) After receiving the results of a national criminal history

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background check from the Federal Bureau of Investigation, the department shall make a determination whether the person who is the subject of a request has been convicted of:

- (1) an offense described in IC 20-26-5-11;
- (2) in the case of a foster family home, an offense described in IC 31-27-4-13(a);
- (3) in the case of a prospective adoptive home, an offense described in IC 31-19-11-1(c);
- (4) any other felony; or
- (5) any misdemeanor;

and convey the determination to the requesting qualified entity.

(g) This subsection applies to a qualified entity that:

- (1) is a **charter school**, a school corporation, or a special education cooperative; and
- (2) seeks a national criminal history background check to determine whether to employ or continue the employment of a certificated employee or a noncertificated employee of a **charter school or** a school corporation or an equivalent position with a special education cooperative.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department may exchange identification records concerning convictions for offenses described in IC 20-26-5-11 with the **charter school**, school corporation, or special education cooperative solely for purposes of making an employment determination. The exchange may be made only for the official use of the officials with authority to make the employment determination. The exchange is subject to the restrictions on dissemination imposed under P.L.92-544, (86 Stat. 1115) (1972).

(h) This subsection applies to a qualified entity (as defined in IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall provide a copy to the public agency. Except as permitted by federal law, the public agency may not share the information contained in the national criminal history background check with a private agency.

(i) This subsection applies to a qualified entity that is a:

- (1) home health agency licensed under IC 16-27-1; or
- (2) personal services agency licensed under IC 16-27-4.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 16-27-2-5(a) and convey the determination to

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the requesting qualified entity.

SECTION 3. IC 20-24-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) A charter school shall adopt a policy concerning criminal history information for individuals who:**

(1) apply for:

(A) employment with the charter school; or

(B) employment with an entity with which the charter school contracts for services;

(2) seek to enter into a contract to provide services to the charter school; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the charter school;

if the individuals are likely to have direct and ongoing contact with children within the scope of the individuals' employment.

(b) A charter school uniformly shall administer a policy adopted under this section for all individuals to whom the policy applies.

(c) A policy adopted under this section must require a national criminal history background check under IC 10-13-3-39 for each individual who applies for certificated employment with the charter school.

(d) A policy adopted under this section may require any of the following:

(1) The charter school may request limited criminal history information concerning each applicant for noncertificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the charter school.

(2) Each individual hired for noncertificated employment may be required to provide a written consent for the charter school to request under IC 10-13-3 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the charter school. The charter school may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 10-13-3-11) to the charter school.

(4) Each individual hired for noncertificated employment may

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be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the charter school the individual's limited criminal history and a document verifying a disposition (as defined in IC 10-13-3-7) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly the questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual who:

(A) seeks to enter into a contract to provide services to a charter school; or

(B) is employed by an entity that seeks to enter into a contract with a charter school;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2), (4), and (5).

An individual who is employed by an entity that seeks to enter into a contract with a charter school to provide student services in which the entity's employees have direct contact with students in the school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the charter school. Failure to comply with subdivision (2), (4), or (5), as required by the charter school, is grounds for termination of the contract. An entity that enters into a contract with a charter school to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a charter school may obtain the information.

(e) If an individual is required to obtain a national criminal history or limited criminal history under this section, the individual is responsible for all costs associated with obtaining the criminal history.

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1 **(f) Information obtained under this section must be used in**
 2 **accordance with IC 10-13-3-29 or IC 10-13-3-39.**

3 SECTION 4. IC 20-26-5-10, AS ADDED BY P.L.1-2005,
 4 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2009]: Sec. 10. (a) A school corporation, including a school
 6 township, shall adopt a policy concerning criminal history information
 7 for individuals who:

8 (1) apply for:

9 (A) employment with the school corporation; or

10 (B) employment with an entity with which the school
 11 corporation contracts for services;

12 (2) seek to enter into a contract to provide services to the school
 13 corporation; or

14 (3) are employed by an entity that seeks to enter into a contract to
 15 provide services to the school corporation;

16 if the individuals are likely to have direct, ongoing contact with
 17 children within the scope of the individuals' employment.

18 (b) A school corporation, including a school township, shall
 19 administer a policy adopted under this section uniformly for all
 20 individuals to whom the policy applies.

21 **(c) A policy adopted under this section must require a national**
 22 **criminal history background check under IC 10-13-3-39 for each**
 23 **individual who applies for certificated employment with the school**
 24 **corporation.**

25 (d) A policy adopted under this section may require any of the
 26 following:

27 (1) The school corporation, including a school township, may
 28 request limited criminal history information concerning each
 29 applicant for noncertificated employment ~~or certificated~~
 30 ~~employment~~ from a local or state law enforcement agency before
 31 or not later than three (3) months after the applicant's employment
 32 by the school corporation.

33 (2) Each individual hired for noncertificated employment ~~or~~
 34 ~~certificated employment~~ may be required to provide a written
 35 consent for the school corporation to request under IC 10-13-3
 36 limited criminal history information or a national criminal history
 37 background check concerning the individual before or not later
 38 than three (3) months after the individual's employment by the
 39 school corporation. The school corporation may require the
 40 individual to provide a set of fingerprints and pay any fees
 41 required for a national criminal history background check.

42 (3) Each individual hired for noncertificated employment may be

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required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 10-13-3-11) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 10-13-3-7) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment ~~or certificated employment~~ may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly ~~the~~ questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract. An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.

~~(c)~~ (e) If an individual is required to obtain a **national criminal**

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history or limited criminal history under this section, the individual is responsible for all costs associated with obtaining the ~~limited~~ criminal history.

~~(d)~~ **(f)** Information obtained under this section must be used in accordance with IC 10-13-3-29 **or IC 10-13-3-39(g).**

SECTION 5. IC 20-28-5-9, AS ADDED BY P.L.246-2005, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) An applicant must do the following:

(1) Submit **the applicant's fingerprints and** a request to the Indiana central repository for ~~limited~~ **a national criminal history information background check** under IC 10-13-3.

~~(2) Obtain a copy of the limited criminal history for the applicant from the repository's records.~~

~~(3) Submit to~~ **(2) Provide permission for** the department **to receive a copy of** the ~~limited~~ **national criminal history background check** for the applicant.

~~(4)~~ **(3)** Submit to the department a document verifying a disposition that does not appear on the ~~limited~~ **national criminal history background check** for the applicant.

(b) The department may deny the issuance of a license or certificate to an applicant who is convicted of an offense for which the individual's license may be revoked or suspended under this chapter.

(c) The department must use the information obtained under this section in accordance with ~~IC 10-13-3-29~~ **IC 10-13-3-39(g).**

(d) An applicant is responsible for all costs associated with meeting the requirements of this section.

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